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9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 IN RE: VOLKSWAGEN “CLEAN DIESEL”) Case No. 3:15-MDL-02672-CRB (JSC)
14 MARKETING, SALES PRACTICES, AND)
15 PRODUCTS LIABILITY LITIGATION) Assigned to Hon. Charles R. Breyer
16 This Document Relates to:)
17 ALL CONSUMER AND RESELLER)
18 ACTIONS)

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21 **OBJECTIONS TO CLASS ACTION SETTLEMENT**
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TABLE OF CONTENTS

	Page
I. Preliminary Statement	1
II. Legal Standard	5
III. Rule 23 (h) is not Complied with when the Deadline for Opting Out or Filing Objections Precedes the Motion for Fees	5
IV. The Court Failed to Comply with its Own Local Civil Rule 7 that Governs Motions	7
V. Basic Requirements of Rule 23 (b) (3) Notice	8
VI. Long Form Notice is Deficient	9
VII. The Use of a Reversionary Clause Is Inappropriate	10
A. The goals of the underlying statutes -- deterrence and reversion -- are violated by the use of a reversion of unspent funds to this defendant	10
B. Circumstances do not require reversion to defendants	12
1. Defendants' course of conduct was intentional and fraudulent	12
2. Redistribution on pro rata basis to claimants is viable and proper.	13
3. Pro-rata distribution of any unclaimed funds creates no windfall to claimants or other class members	13
4. The pooling fund is created by class members releasing their claims against VW and transferring their property/vehicles to defendant(s)	14
5. The Courts favor redistribution to class members absent special circumstances	15
6. Reversion to defendants would undermine the deterrent purpose of the statutes it violated and contradict, as well the deterrent purpose of class actions	16
C. The amount of unclaimed funds is likely substantial	16

1	D. The District court’s preliminary legal analysis relative to the	
2	reversionary clause is flawed	17
3	VIII. Strict Eligibility Requirements Are Often Found Where the Settlement	
4	Agreement Includes a Reversionary Clause Present Here	19
5	A. Reversionary clause creates incentive to restrict class definition and	
6	eligibility	19
7	B. Eligibility requirements are strict and arbitrary	19
8	1. Seller eligibility	19
9	a. Eligible seller identification time limit is unreasonable	19
10	b. Other unreasonable eligible seller exclusions	20
11	2. Lessees of these subject vehicles given relief only if VW	
12	is the lessor	21
13	3. Owner eligibility	21
14	4. Eligible vehicle	21
15	IX. Clear Sailing Agreement Between Parties	22
16	X. The Exclusion of 3.0 Liter Engines alone from the Class Renders The Settlement	
17	Unreasonable, Unfair and Inadequate	22
18	A. The Consolidated Complaint included 3.0 liter engine vehicles as Class	
19	Vehicles entitled to relief along with the 2.0 liter vehicles because both	
20	suffer the same history and irregularities	22
21	B. The Court has understandably expressed concern over the fate of	
22	owners of the 3.0 liter cars	24
23	XI. Objectors and Counsel’s Statements Required by Settlement Agreement	28
24	A. Class Member Jessica Grace Li	28
25	B. Class Member Alexander Birner	29
26	C. Counsel Paul M. Monziona	29
27	XII. Conclusion	30
28		

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Page(s)

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24		
25		
26		
27		
28		

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I. Preliminary Statement

Early in 2007 Volkswagen, (VW) the world's largest automaker faced a serious challenge it considered insurmountable. It was the State of California, precisely the California Air Resource Board [CARB] which had rules in place to limit smog forming nitrous oxide and other pollutants released by automobiles. VW's solution to this challenge was to cheat by installing a 'defeat device', creating one of the largest scandals in automotive industry and when finally 'caught' indignantly denying its criminal behavior and stonewalling governmental efforts to uncover the truth.

Indeed a PowerPoint presentation was prepared by a top technology executive at VW in 2006 detailing how the automaker could cheat on emissions tests in the United States. A decade later VW's colossal scheme was exposed spawning the current crisis.¹

The complete absence of corporate or individual integrity—permitted VW cars to spew millions of tons of harmful poisonous nitrogen oxide pollutants into our air at a rate of up to 40 times the legal limit by installing the cheat device on its vehicles, that unlawfully circumvented regulators' tests and fraudulently obtain certificates of conformity.

The tangled web VW wove wreaked devastating economic loss and environmental contamination.

Unfortunately crime did pay very well, with VW conning its way to record profits while sparing no victims and knowingly "polluting the very air we breathe." Complaint.

Introduction ¶ 1-9

As a result, there are almost 500,000 illegal vehicles on the road in the U.S. alone that

¹New York Times article dated April 26, 2016 by Jack Ewing titled "VW Presentation in '06 showed how to foil emissions tests."

1 continue to pollute our atmosphere after swindling defendants' customers.

2 Approximately 85,000 of those vehicles are the more costly 3.0 liter engines whose
3 owners *are excluded from* the Settlement primarily based upon the pretense that a fix is
4 imminent and the owners will be returned to the *status quo*— but who in reality are
5 'thrown under the bus' by this settlement primarily because these 3.0 liter vehicles are
6 considerably more expensive for VW to 'buy back.' Unfortunately, there is no plan in place
7 to remove these non conforming polluting vehicles from our roads.
8

9
10 Overall, VW sold as 'clean diesels' over eleven million vehicles in over 100 countries that
11 are currently polluting the globe worldwide. (See Mr. Guiffra VW counsel statement Doc.
12 1270 transcript of 2/25/16 pg. 11 line 5)

13 Defendants' fraud and lack of conscience has exacted an irreversible human toll.
14 According to MIT and Harvard University peer-reviewed studies, at least 59 early deaths
15 have resulted and, with doubt, compromising the health, particularly the respiratory
16 systems, of untold numbers of innocent victims.² It qualifies as a category 5 assault on the
17 environment.
18

19 This despicable conduct reaped VW enormous sales/revenue from 2009-2015.
20

21 To put this so called 'historic' settlement into perspective, according to VW's annual
22 reports, its sales/revenue from 2009 through 2015 was approximately 1,287 billion dollars.
23 Exhibit 1, annual reports key numbers 2009—2015.
24

25 The settlement agreement to which these objectors challenge as unfair, unreasonable
26 and inadequate, truly pales in comparison to the revenue attained by VW's fraudulent
27

28 ²And as we also know, the emissions for these cars impact the air quality which in turn can result in adverse health impacts, particularly respiratory issues. Ms. Greenwald dkt 1692 pg. 46 lines 22-24

1 enterprise, which prefers profits over people. In fact, the funding pool amounts to roughly
2 1% of the VW's total sales/revenue for the years it cheated their customers and tricked
3 government regulators.
4

5 Class counsel and VW gained preliminary approval of this settlement without *making*
6 *any accommodation for their 3.0 liter engines equipped with a similar defeat device;*
7 providing any estimate of the actual cost of the 'settlement' to this defendant; the expected
8 percentage of persons who are likely to file claims; the percentage of claimants who are
9 expected or estimated to choose option 1 ["fix it"] which eliminates the buyback cost. No
10 one has called them out publicly for such costs or percentage estimates, which they no
11 doubt possess, because this information is vital for VW to calculate its exposure.
12

13 As such, it is reasonable to conclude, this is not a 'settlement' per se, but an agreement
14 to fund a capped 10.33 billion dollar pool on a flexible *installment* basis with *no* minimum,
15 coupled with a reversionary clause that rewards and authorizes VW to retain the resulting
16 substantial and inevitable 'unspent funds'—since the maximum funding pool is based upon
17 an assumed 100% buyback and 100% lease termination of all eligible vehicles, which is
18 highly unlikely to occur. [Settlement agreement dkt. 1606 § 2.42.]
19
20

21 This mammoth corporation's heinous conduct is being rewarded with the inclusion of a
22 reversionary clause, which is contrary to the deterrent purpose of the statutes it violated.
23 Such a concession to VW is unfair, unreasonable and contrary to the standard set by the
24 Ninth Circuit in *Six Mexican Workers v. Ariz. Citrus Growers* 904 F. 2d 1304, 1308 (9th
25 Cir. 1990) See also *Allen v. Bedolla* 787 F.3d 1218, 1224 (9th Cir. 2015) And recently, *Bell*
26 *v. Consumer Cellular, Inc.* 2016 WL-3063870 U.S. Dist. Ct. D. Oregon (May31, 2016)
27 (citing *Six American Workers* and denying preliminary approval, in part, based upon the
28

1 inclusion of a reversionary clause.) This clause is coupled with a ‘clear sailing’ agreement
2 where defendant is paying class counsel’s attorney fees from a fund separate and apart
3 from class funds which carries “the potential of enabling a defendant to pay class counsel
4 excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf
5 of the class,” *Lobatz v. U.S. West Cellular of CA*, 222 F.3d at 1148; see *Weinberger v.*
6 *Great N. Nekoosa Corp.*, 925 F.2d 518, 524 (1st Cir.1991) (“[L]awyers might urge a class
7 settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet
8 treatment on fees.”); and (3) when the parties arrange for fees not awarded to revert to
9 defendants rather than be added to the class fund.” See *Mirfasihi v. Fleet Mortg. Corp.*,
10 356 F.3d 781, 785 (7th Cir.2004) (Posner, J.) *In re Bluetooth Headset Prod. Liab. Litig.*,
11 654 F.3d 935, 947 (9th Cir. 2011).

12 The Ninth Circuit emphasizes that district courts must “scrutinize all incentive awards
13 to determine whether they destroy the adequacy of the class representatives.” *Radcliffe v.*
14 *Experian Info. Solutions Inc.*, 2013 WL 1831760, at *5, 715 F.3d 1157 (9th Cir. Apr.22,
15 2013). No inquiries were made at any of the hearings to enlighten absent class members
16 regarding this subject.

17 Indeed, one PSC attorney stated 1,300 clients had *signed* with his firm and alluded to
18 other PSC attorneys doing the same [See July 26. 2016 Doc. 1692 transcript page 54
19 preliminary approval hearing.] As it turns out, other PSC attorneys have been privately
20 retained by class members. “I would say in addition, the PSC, we had all of the information
21 from their clients. There are thousand of clients that PSC members had.” Doc. 1692 Pg. 43-
22 44 [Mr. Sarko] Any ‘side retention agreements’ should be disclosed so the court is able to
23 determine if there are antagonistic interests between class members and those involved in

1 negotiating the settlement agreement.

2 **II. Legal Standard**

3 District judges scrutinizing proposed settlements of class actions are required to
4 exercise the highest degree of vigilance. The Judge is a fiduciary of the class, and is
5 subject to the highest duty of care the law requires of fiduciaries. *Reynolds v. Beneficial*
6 *Nat. Bank* 288 F.3d 277, 279-80 (7th Cir. 2002) If a District Court does not apply the
7 correct standard governing distributions of unclaimed funds it constitutes an abuse of
8 discretion in approving the settlement. *Dennis v. Kellogg Co.* 697 F.3d 858, 861. (9th Cir.
9 2012) Indeed “to survive appellate review, the District Court must show it has explored
10 comprehensively all factors and must give a reasoned response to all non-frivolous
11 objections.” *Dennis* at 864. (internal citations omitted)

12 Upon review the District Court’s legal analysis is reviewed *de novo*.

13 **III. Rule 23 (h) is not Complied with when the Deadline** 14 **for Opting Out or Filing Objections Precedes the Motion for Fees**

15 In *In re Mercury Interactive Corp. Securities Litigation* 618 F3d 988 (9th Cir. 2010)
16 the Ninth Circuit had the occasion to construe *Rule 23 (h)* and the commonly employed
17 practice of District Courts, to schedule the deadline for the Motion for attorney’s fees and
18 supporting documents *after* the deadline for filing objections, a practice utilized by this
19 District Court has done in this case.

20 The question in issue was whether *Federal Rule of Civil Procedure 23 (h)* required
21 the District Court to set the deadline for objections on a date after the deadline for filing
22 the Fee Motion and supporting documents, which the Appellate Court in *Mercury .id*,
23 considered to be a pure question of law. The Court answered the question in the
24

1 affirmative. *Mercury at 993*

2 The Court reiterated the rule that, “although a district court has broad discretion to
3 determine attorneys' fees, it abuses that discretion if it makes an error of law. *See Koon v.*
4 *United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996) (“A district court
5 by definition abuses its discretion when it makes an error of law.”) *In re Mercury*
6 *Interactive Corp. Sec. Litig.*, at, 993 (9th Cir. 2010)

7
8 The Ninth Circuit after examining relevant portions of *Rule 23 (h) (1) and (2)*
9 concluded,

10 “the plain text of the rule requires that any class member be allowed an opportunity to
11 object to the fee “motion” itself, not merely to the preliminary notice that such a motion will
12 be filed. In this case (*Mercury*), although notice of the motion was provided to the class,
13 class members were deprived of an adequate opportunity to object to the motion itself
14 because, by the time they were served with the motion, the time within which they were
15 required to file their objections had already expired.”

16
17 The Court observed that advisory Committee notes to the 2003 amendments to *Rule 23*
18 *(h)* and commentators as well “agreed to this logical interpretation of the Rule.”³ *Mercury*
19 *at 993-94*

20 In this case the deadline for opting out or filing objections is September 16, 2016, and no
21 deadline has been yet set for filing the fee motion and supporting documents; and no fee
22 motion has been filed by class counsel or the PSC.

23 Furthermore, there is no provision in the settlement agreement or the Preliminary
24
25

26
27 ³ For example, Moore's Federal Practice counsels that “[a]ny objection deadline set by the court should
28 provide the eligible parties with an adequate opportunity to review all of the materials that may have been submitted
in support of the motion and, in an appropriate case, conduct discovery concerning the fees request.” 5 Moore's
Federal Practice § 23.124[4] (Matthew Bender 3d ed.2009). *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d
988, 994 (9th Cir. 2010)

1 Approval Order for additional notices or any additional objection deadline or opt out period
2 in the class settlement agreement or preliminary approval order allowing a class member
3 to opt out or object to the fee motion, after September 16, 2016.
4

5 The long form notice vaguely states that “class members will have an opportunity to
6 comment on and/or object to the request at an appropriate time.” Answer to question 53,
7 page 25 long form notice. Doc. 1606-3
8

9 In fact, all the Court has required is that class counsel on or before August 10, 2016,
10 submit more information regarding their fees. Merely filing such information does not
11 serve to ‘give notice’ to the class and does not serve as a Motion for fees. The deadline to
12 file the Motion for fees is required to precede the deadline for Objections or opting out.
13 Indeed no deadline has been set or Motion even filed. Motions for fees must be served by
14 class counsel directly to class members in a reasonable manner, which not been
15 accomplished.
16

17 Courts have recognized that the primary, if not exclusive, source of information for
18 most class member will be the initial class notice. Separate notices have been disfavored.
19 e.g. *Nissan Motor Corporation Antitrust Litigation* 552 F.2d 1088, 1104 (5th Cir. 1977) ⁴
20
21

22 **IV. The Court Failed to Comply with its Own Local Civil Rule 7** 23 **that Governs Motions**

24 As aptly stated by the Court in *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d
25

26 ⁴Absentee class members will generally have had no knowledge of the suit until they receive the initial class
27 notice. This will be their primary, if not exclusive, source of information for deciding how to exercise their rights
28 under Rule 23. Although absentee class members are customarily encouraged to make inquiry of the clerk of the
district court where the case is filed if they have further questions, this worthwhile advice cannot justify omitting
material information. *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104 (5th Cir. 1977)

988, 995 (9th Cir. 2010), id footnote 1:

“We also note that the district court failed to comply with its own Local Rules, which ordinarily govern the length of notice required in filing motions for attorneys' fees, in setting the schedule for objections to lead counsel's attorneys' fee request. Those rules provide that papers supporting a motion “must be filed, served and noticed in writing on the motion calendar of the assigned Judge for hearing not less than 35 days after service of the motion.” N.D.Cal. Civ. Local R. 7–2. This means that even in the most routine of fee motions, in which perhaps a few thousand dollars of attorneys' fees may be at stake, the party opposing such fees would have fourteen days to examine the papers supporting the fee request and prepare its opposition. *See* Local Rule 7–3. The Local Rules themselves state that these “are minimum time periods,” and when “complex motions” and oppositions to them are being filed, longer time periods may be necessary. Thus, although compliance with the Local Rules is not at issue in this appeal, the time periods for ordinary motions in the Northern District's own Local Rules further support the inadequacy of the procedures in this case.”

V. Basic Requirements of Rule 23 (b) (3) Notice

Rule 23 © (2) (B) requires the best practical notice under the circumstances. The essence of due process is that “deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 at 313, 70 S. Ct. 652 at 656-57 (1950)

Due process requires that members of the class be provided with enough information to make an informed choice. *In re Federal Skywalk cases* 97 F.R.D 365, 357 (D.C Mo. 1982) The best notice practical under the circumstances must contain an adequate description of the proceeding in written objective neutral terms, that *insofar as possible may be understood by the average class member*. *In re Nissan Motor Corporation Antitrust Litigation* 552 F2d 1088, 1104 (5th Cir. 1977) emphasis added. No notice has been provided regarding fees.

VI. Long Form Notice is Deficient

The long form notice that relates to attorney's fees and taxable costs is deficient. As noted, the separation of the settlement amount and the attorney's fees is not relevant and criticized by both courts and commentators. Courts have consistently stated that the 'separate funds' are indivisible. *Manual § 21.7 at 335 (4th ed. 2004*

The long form notice provides in relevant part:

Page 4 of the summary

Attorneys' Fees

In class actions, the court must approve all plaintiffs' attorneys' fees and costs. Volkswagen has agreed to pay the attorney's fees and cost that the court approves in addition to the settlement benefits described above. This means that class members will receive 100% of the compensation described in this Notice, and their compensation will not be reduced by attorney fees or costs.

First, the fact that the court must approve all fees and costs is mentioned in the first sentence creates the illusion that they need not take action because they are judicially protected.

Second, there is no mention in the summary that class members have the right to contest or object to the fees or costs requested.

In addition, the summary stresses that class members fees do not reduce the compensation to be received, however, courts and commentators stress that the funds are indivisible, and the defendant views the settlement from the vantage point of settling the case as a whole. This non reduction clause, in light of abundant case law, is misleading.

The parties agreement to artificially separate the fee and settlement arrangements should not enabled Class Counsel to circumvent the notice requirements of *Rule 23(b)(3) and (h)* because the entire settlement comes from the same source, the defendants.

1 (“[I]n essence the entire settlement amount comes from the same source. The
2 award to the class and the agreement on attorney fees represent a package deal.”);
3 *cf. Manual for Complex Litig.* § 21.75 (4th ed. 2008) (“If an agreement is reached
4 on the amount of a settlement fund and a separate amount for attorney fees ... the
5 sum of the two amounts ordinarily should be treated as a settlement fund for the
benefit of the class.”) *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d
935, 943 (9th Cir. 2011)

6 It is reasonable to surmise that most class members will read the summary only. So
7 text that states the compensation received by class counsel and PSC does not affect the
8 overall settlement is misleading and certainly not neutral.

9
10 Attorneys’ fees and costs are next mentioned on page 26 at line 28 and again presents
11 an inaccurate description as follows:

12 53. How will the lawyers be paid?

13 Volkswagen will pay the attorneys’ fees and costs in addition to the benefits it is
14 providing to the class members in this settlement. At a later date to be determined
15 by the Court, Class Counsel will ask the Court for an award of attorney’s fees and
16 reasonable costs. Class members will have an opportunity to comment and/or
17 object to this request at the appropriate time. The court must approve the award of
attorney’s fees and costs to be paid by Volkswagen.

18 The notice is vague and gives the impression that the fees are not part of the settlement
19 proceeds, which they are. And the statement that class members will have an opportunity
20 to comment or object to the fee request at the appropriate time is essentially meaningless
21 without notice and the opportunity to be heard.

22
23 Finally, the amount of the attorney’s fees awarded directly impacts class members
24 recoveries under the settlement.

25 VII. The Use of a Reversionary Clause Is Inappropriate

26 **A. The goals of the underlying statutes – deterrence and reversion – are violated**
27 **by the use of a reversion of unspent funds to this defendant.**

28 Initially, “the distribution plan must meet the standard regardless of whether the

1 *award was fashioned by the settling parties or the trial court.” Nachsin v. AOL LLC*
2 *663 F3d 1034, 1040 (9th Cir. 2011)*

3 The Ninth Circuit instructs that, “*reversion to the defendant may be appropriate*
4 *when deterrence is not a goal of the statute or is not required by the circumstances.”*
5 *Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1308 (9th Cir. 1990); see*
6 *also Allen v. Bedolla, 787 F.3d 1218, 1224 (9th Cir. 2015)* (stating that a “reverter that
7 returns unclaimed fees to the defendant” is a “subtle sign that class counsel have allowed
8 pursuit of their own self-interests ... to infect the negotiations”) (quoting *In re Bluetooth*
9 *Headset Products Liability, 654 F.3d 935 at 947 (9th Cir. 2011)*).

12 The objectives of RICO and consumer fraud statutes, as well as common law fraud,
13 include deterrence. *See Millan v. Cascade Water Servs., Inc., 310 F.R.D. 593, 612 (E.D.*
14 *Cal. 2015)* . “If unclaimed funds are to revert to a defendant [in an FLSA case,] the parties
15 should explain why those funds should [so] revert [.]” *Id.*; *see also Dudum v. Carter's*
16 *Retail, Inc., 2015 WL 5185933, at *3 (N.D. Cal. Sept. 4, 2015)* (denying a motion for
17 preliminary approval of a class action settlement and directing counsel to explain why any
18 reversion of unclaimed settlement funds to the defendant is appropriate).

21 Class counsel’s motion to approve this settlement provides no explanation, analysis, or
22 authority why reversion of any unclaimed settlement funds to defendant is appropriate
23 here. *Indeed, during* the fairness hearing there was no mention, reason or rationale for
24 the inclusion of a reverter clause. *See Bell v. Consumer Cellular, Inc., No. 3:15 CV 00941*
25 *SI, 2016 WL 3063870, at *3 (D. Or. May 31, 2016)* See also; *In re Lupron Marketing and*
26 *Sales Practices Litigation, 677 F. 3d 21,33 (1st Cir. 2012) cert. Denied, 133 S. Ct. 338,*
27 *184 L. Ed 239* (favorably reviewing ALI principles, adopting a “reasonable approximation”
28

1 approach to the distribution of unclaimed funds, and noting that “ the ALI principles
2 support our adoption” of this pro rata approach. cf. American Law Institute, *Principles of*
3 *the Law of Aggregate Litigation* § 3.07 (a)
4

5 Where a statute’s objectives include deterrence, as does RICO and consumer fraud
6 statutes, it contradicts these goals to permit the defendant to retain unclaimed funds.
7 *Khanna v. Inter-Con Sec. Sys. Inc.*, 2012 WL 4465558, at *11 (E.D.Cal.2012) (quoting,
8 *inter alia*, *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1308
9 (9th Cir.1990)); see *La Parne v. Monex Deposit Co.*, 2010 WL 4916606, at *4 (C.D.Cal.
10 *Nov. 29, 2010*)
11

12 The Ninth Circuit has declared that a strong judicial policy favors settlement of class
13 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.1992).
14 Nevertheless, where, as here, “parties reach a settlement agreement prior to class
15 certification, courts must peruse the proposed compromise to ratify both [1] the *propriety*
16 of the certification and [2] the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d
17 938, 952 (9th Cir.2003). During this process, Federal Courts must pay “undiluted, even
18 heightened, attention” to class certification requirements in a settlement context. *Amchem*
19 *Products, Inc. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997);
20 *Molski v. Gleich*, 318 F.3d 937, 946 (9th Cir.2003).
21
22

23 Moreover, in the Ninth Circuit the distribution plan must meet the standards
24 established by *Six Mexican Workers. id & Nachsin v. AOL LLC* 663 F3d 1034, 1040 (9th
25 *Cir*, 2011). This distribution plan does not meet the standard.
26

27 **B. The Circumstances do not justify reversion to defendants.**

28 **1. Defendants’ course of conduct was intentional and fraudulent.**

1 In *Van Gemert v. Boeing* 739 F2d 730, 736-37 (2nd Cir. 1984), the court permitted
2 reversion to the defendant and rejected reversion to the government as well because —
3 unlike VW — the defendant had followed the letter of the law and could not have
4 anticipated its liability. Thus, reversion to the defendant was appropriate because
5 deterrence was not a goal of the statute, nor was it required by the circumstances.
6 However, this is not the case with VW.
7

8 In accordance with *Six (6) Mexican Workers v. Arizona Citrus Growers* 904 F.2d
9 1301, 1309 (9th Cir. 1990) and in light of the deterrence objective of RICO and consumer
10 fraud statutes, as well as the aggravated nature of the VW violations, reversion of the funds
11 to the defendants is not a viable or appropriate option. Consequently, the settlement
12 agreement which includes a reversionary clause should be disapproved by this Court as
13 unfair and unreasonable.
14
15

16 **2. Redistribution on a pro rata basis to claimants is viable and proper**

17 In some circumstances it is not logistically or economically viable to make additional
18 pro-rata payments to class members, but that is not the case here where class members
19 are identifiable and re-distribution of unclaimed funds is clearly practical. Indeed, at the
20 ‘fairness hearing’ one PSC member (Mr. Sarko) remarked that the 17 digit long VIN
21 number constitutes a ‘digital fingerprint’ of each car. [Dkt. 1692 filed 7/28/16 pg. 42.]
22

23 Furthermore, defendants are mailing the long form notice by first class mail, which
24 requires the names and addresses of most, if not all class members.
25

26 **3. Pro-rata distribution of any unclaimed funds creates no windfall to 27 claimants or other class members**

28 A pro rata distribution to class member of unspent funds, to these claimants duped by

1 VW, would not result in a windfall. For example, class members typically bought their
2 vehicles at the retail price from VW but the defendant is buying them back at the 'clean
3 trade in value', which is essentially the wholesale price.
4

5 Further, bear in mind, that defendants removed numerous cases from state courts to
6 Federal courts based upon *28 U.S.C.A § 1332 Diversity of citizenship; amount in*
7 *controversy; costs*, with defendants representing under oath, that the amount in
8 controversy to a legal certainty for each class member's case removed exceeded the sum of
9 \$75,000 exclusive of interest and costs.
10

11 **4. The pooling fund is created by class members releasing their claims against**
12 **VW and transferring their property/vehicles to defendant(s)**

13 This funding pool is distinct from most other mass torts such as oil spills or 'asbestos
14 exposure' because in consideration for funding the pool, defendants not only obtain the
15 release of liability of all claims of all class members, these defendants, in most cases
16 receive the vehicles of these class members. Hence, the class members are by all rights
17 the equitable owners of the funds having given up their claims and property. VW in all
18 fairness is not entitled to their property, be released from liability and then retain the
19 surplus funds. *Boeing Co. v. Van Gemert 44 U.S 472 481-82* ("The members of the class,
20 whether or not they assert their rights, are at least owners of their respective shares in the
21 recovery.")
22
23

24 It is unfair and unreasonable for class members to have their claims extinguished, be
25 exposed to pollutants and have their property constructively repossessed by defendants,
26 allowing VW the right to resell those vehicles, provided their plan to fix the emissions
27 irregularities is successful and yet be beneficiaries of a reverter clause. Perhaps the
28

reason the record is silent on this matter is that such a clause is indefensible.

5. The Courts favor redistribution to class members absent special circumstances

“Money not claimed by class members should be used for the class's benefit to the extent that is feasible.” Citing *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir.1990); *Dennis v. Kellogg Co.*, 697 F.3d 858 (9th Cir.2012).

See *American Law Institute, Principles of the Law of Aggregate Litigation* § 3.07

(a)

If individual class members can be identified through reasonable effort, and the distributions are sufficiently large enough to make individual distributions economically viable, settlement proceeds should be distributed directly to individual class members. (2010).

See also Martin H. Redish, Peter Julian & Samantha Zyontz, *Cy Pres Relief and the Pathologies of the Modern Class Action: A Normative and Empirical Analysis*, 62 Fla. L.Rev. 617 (2010). *Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682, 689-90 (7th Cir. 2013) Also See *Newberg on Class Actions* §12:30 fifth edition.

In *Jones v. Agilysys Inc.* 2-14 WL 2090034, 1 N.1 (N.D. Cal. 2014), the court approved a settlement in which “any unclaimed funds will be distributed on a pro-rata basis to those class members who submitted claim forms,” and no amount will revert to the defendant “[t]he Court lauds the inclusion of a non reversion provision.” *Klier v. Elf Atochem North America Inc.* 658 F3d 468, 476 (5th Cir. 2011) (“where it is still logistically feasible and economically viable to make additional pro rata distribution to class members, the District Court should do so.”) citing *American Law Institute, Principles of the Law of Aggregate Litigation* § 307 (2010) See also *In re Baby Products Antitrust Litigation*, 708 F3d 163, 173, (3rd Cir. 2013) (direct distributions to the class are preferred over cy pres

distributions.)

6. Reversion to defendants would undermine the deterrent purpose of the statutes it violated and contradict, as well the deterrent purpose of class actions

The Complaint's statutory allegations have a deterrent or punitive purpose; and when faced with statutes that have a deterrent purpose as a goal, the courts in this circuit have declined to allow reversion of unclaimed funds to a settling defendant when a statute's objectives include deterrence for disgorgement, as it would contradict the goals for the defendant to retain unclaimed funds. *Six Mexican Workers* at 1308 (See Newberg § 1120)

In *Diamond Chemical, Inc. v. Akzo Noble Chemicals B.V.* 517 F. Supp. 2d 212, 219 (D.D.C. 2007) court citing *Six Mexican Workers* 904 F. 2d 1308 rejected reversion to defendants that were alleged to have violated Sherman Act:

Moreover, reversion to Defendants appears inappropriate in the instant situation because the settlement was based on allegations that Defendants violated Section 1 of the Sherman Antitrust Act which, in addition to compensatory elements, has punitive and deterrence goals. See *In re Folding Carton Antitrust Litig.*, 557 F.Supp. 1091, 1105 (N.D.Ill.1983), *reversed in part*, 744 F.2d 1252 (7th Cir.1984), (citing *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 494, 88 S.Ct. 2224, 20 L.Ed.2d 1231 (1968) and *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 745-46, 97 S.Ct. 2061, 52 L.Ed.2d 707 (1977)). Thus, when faced with statutes that have deterrence as a goal, courts have declined to allow reversion of unclaimed settlement funds to a settling defendant. See *id.* ("in light of the Sherman Act policy of deterrence and the defendants' wrongdoing, we reject their equitable claim to the fund"); 219 *Six Mexican Workers*, 904 F.2d at 1308 ("When ... a statute's objectives include deterrence or disgorgement, it would contradict these goals to permit the defendant to retain unclaimed funds."); see also Newberg § 11.20." * * * *Diamond Chem. Co. v. Akzo Nobel Chemicals B.V.*, 517 F. Supp. 2d 212, 219 (D.D.C. 2007)

C. The amount of unclaimed funds is likely substantial

Although unfortunate, the record is devoid of any studies or estimates of the percentage of persons who are expected to file claims or the percentage of claimants who will likely select option 1 [the fix it solution], the amount of unclaimed funds is likely to be

1 substantial. In fact the gross pooling fund sum is based on 100% buy back participation.

2 Furthermore, VW will be receiving in consideration for their 'buyback' costs the
3 transfer of hundreds of thousands of vehicles all of which have a considerable book value
4 especially if the emissions abnormalities are fixed by VW which the company claims is
5 feasible.
6

7 Indeed, the record discloses the 'fix it option 1' is expected by VW and the PSC to be
8 popular with class claimants. *"[But] there are a significant number of consumers that*
9 *love these cars and they want to keep them if they can. So we had to have options"*
10 7/28/16 transcript dkt. 1692 pg. 24 lines. 20-21. [Mr Rice of the PSC discussing the necessity
11 of Option 1.]
12

13 So hypothetically, if 50% of claimants opt for option 1, there are no buyback costs aside
14 from restitution. The net funds paid by this variable alone would amount to nearly half the
15 funding pool or 5.16 billion minus restitution costs. Studies have shown that the median
16 rate of participation in consumer class action settlements is about 10%. However, even if
17 one were to increase that rate by 15 times and 75% participate, this is yet another factor
18 that increases the unspent funds substantially.
19
20

21 **D. The District Courts preliminary legal analysis relative to the reversionary**
22 **clause is flawed**

23 The District Court's preliminary approval opinion recognizes that reversion clauses can
24 be problematic and generally minimize class action pay-outs, ¶ 15 but attempts to
25 rationalize VWs retention of unspent funds because the Court believes VW has incentive to
26 encourage class members to participate in the settlement based on the partial consent
27 decree between VW, the DOJ, and the State of California which require VW to "remove
28

1 from commerce in the United States *and/or perform a fix* on at least 85% of the 2.0 L
2 vehicles by June 30, 2019" or suffer monetary damages. (emphasis supplied)

3 The court's analysis is overly optimistic in VW's favor, because attempting to
4 determine the incentive of this particular defendant to pay out money is guesswork at best.
5 Moreover, it is not directly related to the fairness or reasonableness of the agreement or
6 the propriety of the inclusion of a reversion clause.
7

8 Moreover, the record in this case, including the terms of the settlement agreement, do
9 not support the trial court's rationale.
10

11 First of all, VW would much prefer that class members fail to respond—thereby
12 forfeiting any monetary relief while releasing VW from any past, present, or future liability
13 regarding the 2.0 liter vehicles owners.
14

15 Secondly, VW, no doubt, favors the 'fix it' or option 1 of the settlement agreement which
16 eliminates VW's buyback costs altogether.

17 Indeed, according to VW, option 1 will be a popular option, and it's attorney has stated
18 on the record that a significant number of owners would like to keep their vehicles because
19 they love them. And part of the plan is to fix them. dkt 1692 transcript 7/28/16 pg. 24 lines
20 20-24.
21

22 Common sense suggests that the phenomenal result for VW is that claimants not only
23 choose option 1, but if option 2 is exercised, the vehicles purchased by VW from its
24 customers can be fixed, resold and put back on the road — not taken off the road.
25 Just having offered a 'fix it' option suggests that VW considers it possible to fix these
26 vehicles and recoup all or part of the funds expended to buy back the vehicles—and put
27 them back on the road, once again not take them off as the Court suggests.
28

1 To underscore this point, the Partial Consent Decree includes the 3.0 liter diesel
2 engines (approx. 85,000) and there is no buyback program in existence or championed by
3 VW to get those polluting vehicles ‘off the road’ The exclusive plan for the 3.0 liter engine
4 dropped from the settlement and apparently favored by VW is to ‘fix them’, not retire them
5 from service.
6

7 Surely, from now to June 30, 2019, leaves of lot of time for technological advancements
8 especially if greatly motivated.
9

10 In addition, the strict eligibility requirements imposed by the agreement and amended
11 class definition burdened with numerous exclusions is inconsistent with an incentive to
12 buy back these vehicles and take them off the road permanently.
13

14 **VIII. Strict Eligibility Requirements Are Often Found Where the Settlement Agreement Includes a Reversionary Clause Which Is Present Here**

15 **A. Reversionary clause creates incentive to restrict class definition and eligibility**

16 As stated in the *Judge’s Pocket Guide to Class Actions*, “ a reversion clause creates
17 perverse incentives for a defendant to impose restrictive eligibility conditions and for class
18 counsel and defendants to use the artificially inflated settlement amount as a basis for
19 attorney’s fees.” The class definition has numerous exclusions based upon arbitrary dates
20 and the Consolidate class definition has been revised to exclude 3.0 liter engines.
21
22

23 **B. Eligibility requirements are strict and arbitrary**

24 **1. Seller eligibility**

25 **a. Eligible seller identification time limit is unreasonable**

26 An eligible seller is defined as a person who acquired an eligible vehicle before
27 September 18, 2015, and sold or transferred ownership after September 18, 2015, but
28

1 before June 28, 2016.⁵

2 The Long Form Notice dkt. 1601-3 to be individually mailed to each class member states
3
4 in pertinent part on pg. 13 question 17:

5 **17. How do I identify myself as an Eligible Seller? And when must I do so?**

6 To qualify for an eligible seller restitution payment you must identify yourself
7 (and Volkswagen must receive any mailed eligible seller identification form)
8 during the Eligible Seller identification period. This period will last at least
9 for 45 days from entry of the preliminary approval order. If the Court enter the
10 preliminary approval order on July 26, 2016 (the date of the preliminary
11 approval hearing), the Eligible Seller Identification Period will run until
12 September 16, 2016. (emphasis not supplied)

13 This is the primary notice given to an 'eligible seller.' The rationale for such a 'short
14 date' according to VW at the fairness hearing is:

15 And the basis for that (short identification period) Your Honor, is that we need to
16 know of their existence (sellers) and their volume and the vehicles involved in order
17 to start the buyback process because there is a payment related to both the seller
18 and the purchaser in that situation. 7/26/16 transcript pg. 38 lines 12-16

19 First of all, if VW is able to mail a long form notice to 'eligible sellers' containing the
20 above advisory, it certainly knows who the eligible sellers are, where they are, and the
21 vehicles involved. Consequently VW's so called need to know their identity by September
22 16, 2016, rings hollow. Further no real reason was given for the need to know by September
23 16, 2016. This is extremely harsh and serves no real reason, except to extinguish the rights
24 of these select persons.

25 **b. Other unreasonable eligible seller exclusions**

26 Even if the seller is timely identified, if the seller acquired his vehicle on or after
27 September 16, 2016, he not a class member or eligible seller; or if the seller's vehicle was

28 ⁵The dates are arbitrary and will be discussed below

1 totaled and title was transferred to his insurance company after September 18, 2015, but
2 *before June 28, 2016*, he also is not a class member or eligible seller. ¶ 2.31 SA The latter
3 exclusion is especially troublesome because it presumes that the class members would
4 have notice of the settlement agreement before notice was sent, which is highly unlikely.
5

6 **2. Lessees of these subject vehicles given relief only if VW is the lessor**

7 Section 2.29 provides that, “no person shall be considered an Eligible Lessee by virtue
8 of holding a lease issued by a lessor other than VW Credit Inc.” The record offers no
9 explanation or rationale for discriminating against lessees issued by companies other than
10 VW Credit Inc., and to do so is unreasonable and unfair.
11

12 **3. Owner eligibility**

13 Section 2.30 of the settlement agreement basically provides an eligible owner ceases to
14 be the eligible owner if he transfers ownership of the eligible vehicle between September
15 16, 2015, and June 28, 2016, being the date the class settlement agreement was executed.
16 This particular exclusion is unfair and is senseless, unless the otherwise eligible owner is
17 clairvoyant and somehow knew the parties would settle on June 28, 2016.
18
19

20 **4. Eligible vehicle**

21 Section 2.30 provides that the vehicle otherwise eligible is not eligible if it was not
22 registered with the state Department of Motor Vehicles on June 28, 2016, or currently
23 inoperable prior to the opt out date. Why should one not have the right to fix the vehicle
24 prior to it actually being brought back.
25

26 Section 2.16 “Class” excludes owners who sell or transfer ownership of the eligible
27 vehicles between June 28, 2016, and the opt out date [September 16, 2016.] The former
28 date occurs before the owner receives notice of the settlement.

1 Section 4.2.2 of the Settlement agreement also excludes any otherwise eligible vehicle
2 which was totaled and consequently transferred title to their insurance company on or
3 after the Opt out deadline (September 16, 2016) but before the claim deadline (September
4 1, 2018) are not entitled to the buyback payment, which is unfair and unreasonable
5 because the insurance companies usually pay the cash value of the vehicle at the time of
6 the loss.
7

8 Unfortunately, the percentage of vehicles totaled over a two year period is quite
9 significant—as much as 14 % yearly rolling average.⁶ This exclusion is unfair and
10 unreasonable on its face.
11

12 IX. Clear Sailing Agreement Between Parties

13 When the attorney's fees are to be paid from a fund separate and apart from class
14 funds there carries the risk that class counsel may compromise the claims of the class in
15 return for 'red carpet treatment' on the fees. *In re Bluetooth Headset Prod. Liab. Litig.*,
16 654 F.3d 935, 947 (9th Cir. 2011). This is especially true where the parties have negotiated
17 a reversionary clause. *Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 785 (7th Cir.2004)
18 (Posner, J.).
19
20

21 X. The Exclusion of 3.0 Liter Engines from the Class Renders The Settlement 22 Unreasonable, Unfair and Inadequate

23 A. The Consolidated Complaint included 3.0 liter engine vehicles as Class 24 Vehicles entitled to relief along with the 2.0 liter vehicles because both suffer the 25 same history and irregularities

26 ⁶Over the last decade, total loss frequency has increased while overall claim frequency rate has declined. In
27 2000, about 9 percent of all vehicles for which an appraisal was written were flagged as a total loss; for the rolling 12
28 months ended June 2013, this number had grown to 14.24 percent (taking into account obvious totals where no
appraisal is written, the industry-wide total loss percentage trends about 3 to 4 percent higher [14 percent in 2000 to
nearly 19 percent]].^[i] Essentially, this equates to a 5-percent total loss frequency increase over the last decade.
<http://www.propertycasualty360.com/2013/10/04/what-will-drive-total-loss-auto-claims-in-2014?>

The original Class definition included 3.0 liter as ‘Class Vehicles’. ¶ 348

“348. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil Procedure 23(a); (b)(1); (b)(2); (b)(3); and/or (c)(4), on behalf of themselves and all others similarly situated as members of the following Nationwide Class and State Classes (collectively, the “Classes”); on their federal and state claims as the purchasers and lessees of the following Class Vehicles:

2.0-liter Class Vehicles

Volkswagen Jetta TDI	2009-2015
Volkswagen Jetta Sport Wagen TDI	2009-2014
Volkswagen Beetle TDI	2012-2015
Volkswagen Beetle Convertable TDI	2012-2015
Audi A3 TDI	2010-2015
Volkswagen Golf TDI	2010-2015
Volkswagen Golf Sport Wagen TDI	2015
Volkswagen Passat TDI	2012-2015

3.0-liter Class Vehicles

Volkswagen Touareg TDI	2009-2016
Porsche Cayenne Diesel	2013-2016
Audi A6 Quattro TDI	2013-2016
Audi A7 Quattro TDI	2014-2016
Audi A8 TDI	2014-2016
Audi A8L TDI	2014-2016
Audi Q5 TDI	2014-2016
Audi Q7 TDI	2009-2016

The Consolidated Complaint dkt. 1230 (Complaint) states that the after VW announced its fraudulent scheme these “Class Vehicles” plummeted in value. ¶ 322 The Complaint. states that “even if Volkswagen is able to make the Class Vehicles compliant, Class members will nonetheless suffer actual harm and damages because their vehicles will no

1 longer perform as promised. This will necessarily result in a diminution in value of *every*
2 Class Vehicle.¶ 325“ (Emphasis supplied)

3 In addition the Complaint describes Class Vehicles, which includes 3.0 liter cars, as
4 “virtually unsellable” and “subject to recall for the indefinite future.” ¶ 322 It further
5 refers to the Class Vehicles, which include 3.0 liter vehicles as “*tainted, stigmatized and*
6 *unsellable.*” ¶ 325

7
8 In sum PSC and class counsel realize that these owners suffered similar injuries if not
9 greater than 2.0 liter owners, yet nonetheless were dropped from the class.

10
11 These 3.0 liter cars will also suffer in value alone simply by virtue of its negative
12 reputation. Even a satisfactory fix will not restore market value.

13
14 The Court repeatedly stressed during various hearings that the 85, 000 3.0 liter owners
15 are ‘part of the case’ and entitled to a relief. Unlike the 2.0 liter owners the 3.0 liter cars are
16 not given the benefit of the second ‘buy back’ option primarily because VW believes it can
17 fix the 3.0 liter cars, which so far is not the case.

18
19 However, any fix that takes place does not serve to cure the tainted and stigmatized
20 reputation of the 3.0 liter cars, but unlike the 2.0 liter cars the 3.0 liter cars are not given an
21 election of remedies. Furthermore, the 3.0 liter cars will carry their own ‘baggage’, such as
22 an undesirable reputation, so even if a satisfactory fix is accomplished, their value will be
23 forever diminished in the marketplace.

24
25 **B. The Court has understandably expressed concern over the fate of owners of
the 3.0 liter cars**

26
27 For example, at the status hearing held on May 24, 2016 the Court stated, “*I have been*
28 *assured that the parties are working diligently on resolving the 3-liter engine cars’*

1 *issues.”* pgs 6-7. dkt 1535

2 Again during the status hearing held June 30, 2016, the Court on page 7 lines 21-25
3 declared:

4 Court:

5
6 So now I want to turn to the unsettled portion of the case. One of the unsettled
7 portions, *and the one that concerns the Court the most at this point, are what is*
8 *it that can be done with the approximate 85,000 car owners who have*
9 *purchased a 3-liter car.* And I thought maybe I would get an update from the
10 Environmental Protection Agency. Mr. [Van] Eaton, so if you want to come forward
and tell us where we are on that. (Emphasis supplied) pg. 7 lines 21-25 & pg. 8 lines
1-2

11 Later the Court asked for a report from Mr. Giuffra. Dkt 1629 Pg. 10 lines 12-14

12 Mr. Giuffra: [representing VW]

13 * * * Its just a process that will take time, because of the need to do
14 **durability testing** to make sure that the fix is a long lasting fix. [emphasis
15 supplied] * * * dkt 1629 pg. 12 lines 15-17

16 The above reply by Mr. Giuffra at the June 30, 2016, hearing summarizing the process
17 certainly implied that there was a viable fix on the horizon, but that it remained to be seen
18 if it would hold up in the long run in real world conditions. And that would, of course, take
19 time to determine in the meantime leaving these illegal vehicles on the road. Obviously,
20 this approach has failed to provide any relief to 3.0 liter owners and continue to pollute the
21 environment.
22

23 Significantly, on July 13, 2016—less than two weeks after the June 30, 2016
24 hearing—CARB issued its Notice of Violation [NOV] to VW ref. No. IUC-2016-013 & 014
25 (Audi and Porsche) regarding the so called proposed ‘lasting fix’ to the 3.0 liter engines
26 outlining numerous serious violations that go to the core design and engineering of the so
27 called fix. The NOV to Audi and Porsche stated that: “*Audi and Porches’s submissions*
28

1 *are incomplete, substantially defective and fall far short of the meeting the legal*
2 *requirements to return these vehicles to the claimed certified configuration.” [¶ 4 of*
3 *both notices to Audi and Porsche]* See Exhibits 2 and 3 attached hereto.

4
5 After VW received these NOV from CARB on *July 13, 2016*, regarding Audi and
6 Porsche 3.0 liter engines models, the Court once again at the *July 26, 2016*, fairness
7 hearing inquired about the 3.0 liter engine status as follows:

8 Court:

9
10 Before I listen to a presentation with respect to the proposed settlement, I'd like to get
11 an update, if I might, on the status of the litigation with respect to the three-liter car.
12 The proposed settlement is the settlement of the two-liter vehicles. But there are
13 approximately 85,000 three- liter cars that are not included within this proposed
14 settlement.

15 So perhaps I can turn to you Mr. Van Eaton, representing the governmental entities and
16 you could give me a update. [Pg. 6 line 22 to pg. 7 line 5 dkt 1692]

17 Mr. Van Eaton's response was consistent again giving the impression that it was
18 matter of durability and such testing would be expected to take an extended matter of
19 time. e.g Mr. Van Eaton at pg 8 lines 15-16 "*Absolutely right, Your honor. The term of*
20 *art they use is "durability."*

21 Mr. Van Eaton seemed to believe that VW thought it could fix the 3.0 liter engines.
22 However given VW's historicity of misleading governmental agencies there is serious
23 concern regarding the credibility of VW's opinion.

24 Mr. Van Eaton, for whatever reason, inexplicably failed to mention that earlier in the
25 same month a mere 13 days prior to the July 26, 2016, fairness hearing, CARB had issued
26 its NOV to VW relative to its so called 3.0 liter 'emissions fix.' See *Exhibits 2 and 3*. Even
27 if these non disclosures were inadvertent, can be presumed, it had the effect of 'stringing
28

1 the court along.’

2 More recently at the status hearing held on August 25, 2016, the Court stated: “Thank
3 you very much. So let’s turn to major issue that remains yet unresolved which is the three
4 liter cars” Dkt. 1775 pg 11 ln 3-4 8/25/16

5
6 Mr. Giuffra hedging on behalf of VW replied in part, “and the long and short of it is the
7 company still believes that it can fix these without adversely affecting their performance.
8 And we believe we can fix them to the standard to which they were originally certified.
9 Can’t guarantee it your honor.” pg. 11 lines 15-19

10
11 Significantly, the long and short of it—to borrow Mr. Guiffra’s vernacular—VW could not
12 give any guarantee that any fix would occur or when it might occur. All the Court was given
13 is ‘VW opinion’ on the matter. Hardly an unbiased opinion and indeed one given by a
14 recidivist prevaricator. Mr. Van Eaton of the EPA opined that “it’s very difficult to project a
15 timetable for resolution because this work is ongoing.” dkt. 1775 pg. 17 line 21 8/25/16

16
17 The Court quite rightfully stated that, “*having a car on the road in violation of EPA*
18 *standards is, in the Court’s view intolerable*. It’s something that must be addressed,
19 and must be corrected, and must be done as expeditiously as possible. * * * They cannot
20 continue to be in violation of EPA standards.” Page 22 dkt 1775 8/25/16

21
22 We add that VW should not be allowed to continue to contaminate the very air we
23 breathe and adversely affect public health and welfare.

24
25 Amazingly, once again, no one informed the Court that VW had received a NOV on
26 these 3.0 liter cars in mid July which the Court had every right to be advised.

27 The class settlement definition, which was modified from the original complaint,
28 without court approval, renders the settlement unfair, unreasonable and inadequate

1 because it excludes owners of the 3.0 liter cars, who are forced to drive their cars illegally
2 and be exposed to pollutants.

3 **XI. Objectors and Counsel's Statements Required by Settlement Agreement**

4 **A. Class Member Jessica Grace Li**

5
6 At all relevant times, this Objector was and is of legal age. She resides at 1745 Shadehill
7 Pl., Diamond Bar, CA 91765-2848. Her telephone number is: 909 630 8613. The VIN of her
8 eligible vehicle is: WVWDM7AJ7CW351611. Her vehicle is eligible and she is an eligible
9 owner. For purposes of clarification, her 2015 validated registration card with the State of
10 California, Department of Motor Vehicles is attached hereto as Exhibit 4. On or about
11 September 3, 2012, this Objector purchased a new 2012 Volkswagen Golf TDI 2.0 liter Clean
12 Diesel from Ontario VW, an authorized VW dealer in Ontario, California, and since then
13 has been the owner of such vehicle.
14
15

16 This Objector entered her VIN at www.VWCourtSettlement.com and was informed that
17 her vehicle qualified. Exhibit 5 (Vehicle Look Up) attached. She has reviewed the Class
18 definition and has not opted out of the Class and further, her attorney will ask the Court to
19 consider supporting papers, materials or briefs that he may wish the court to consider
20 when reviewing her Objections.
21

22 She objects through her counsel Paul M. Monziona, who she understands will be filing a
23 notice of appearance with the court on her behalf by the date directed by the Court and will
24 also file a sworn declaration attesting to his representation of her regarding this Objection
25 and all matters pertinent thereto. She further expects that her counsel intends to make an
26 appearance on her behalf at the Fairness Hearing set for October 3- 7, 2016 or such time as
27 otherwise directed by the Court.
28

1 **B. Class Member Alexander Birner**

2 At all relevant times this Objector was and is of legal age. He resides at 1211 Oakcrest
3 Circle, Corona, CA. His telephone number is: 309 678 0512. The VIN of his eligible vehicle is:
4 3VWLL7AJ1CM006554. His vehicle is eligible and he is an eligible owner. For purposes of
5 clarification, his 2015 validated registration card with the State of California, Department
6 of Motor Vehicles is attached hereto as Exhibit 6.
7

8 On or about August 15, 2015, this Objector purchased from the Morton Auto Auction
9 located in Morton, Illinois, a 2012 Volkswagen Jetta VIN 3VWLL7AJ1CM006554, which he
10 registered in the State of California on or about September 3, 2015.
11

12 This Objector entered his VIN at www.VWCourtSettlement.com and was informed that
13 his vehicle qualified. Exhibit 7 (Vehicle Look Up) attached. He has reviewed the Class
14 definition and has not opted out of the Class.
15

16 Further, he objects through his counsel, Paul M. Monzione, who he understands will be
17 filing a notice of appearance with the court on his behalf by the date directed by the Court
18 and will file on his behalf a sworn declaration attesting to his representation regarding his
19 Objection and all matters pertinent thereto. He anticipates that his attorney will ask the
20 Court to consider supporting papers, materials or briefs that he may wish for the court to
21 consider when reviewing his Objections. He further expects that his counsel intends to
22 make an appearance on his behalf at the Fairness Hearing set for October 3-7, 2016 or such
23 time as otherwise directed by the Court.
24
25

26 **C. Counsel Paul M. Monzione**

27 Both of these Objectors have hired Counsel to prepare and file their Objections. Their
28 Objections primarily pertain to the entire class, but if some grounds pertain to a specific
29

1 subset of the Class, it will be made evident during the course of the argument. I, Paul M.
2 Monzione, have filed a notice of appearance with the Court by the date set forth in the
3 Preliminary Approval and Class Certification Order or as the Court otherwise directed and
4 a sworn declaration attesting to his representation of each of the above named class
5 members on whose behalf the objection is being filed.
6

7 I or my co counsel intend to appear at the Fairness Hearing on behalf of the Objectors. I
8 have also filed written notice of our intent to appear at the Fairness Hearing in accordance
9 with the requirements set forth in the Preliminary Approval Order or by such time and in
10 such manner as the Court may otherwise direct.
11

12 Furthermore Counsel preserves Objectors' right to appeal any adverse Order or ruling
13 by the Court.
14

15 XII. Conclusion

16 The proposed settlement should be disapproved by the court because it is unfair,
17 inadequate, and unreasonable. The parties have not met their burden of proof.
18

19 Date: September 16, 2016

20 /s/ Paul M. Monzione
21 Paul M. Monzione, Objector's Attorney
22
23
24
25
26
27
28

APPENDIX

Exhibit	Page
1 Annual Reports Key Numbers	
2 Notice to Audi and Porsche Owners dated _____	
3 Notice to Audi and Porsche Owners dated _____	
4 Li 2015 Validated Registration	
5 Li Qualification	
6 Birner 2015 Validated Registration	
7 Birner Qualification	

EXHIBIT LIST

1. Key Figures page from annual reports 2009-2015
2. Notice of Violation from CARB to Audi
3. Notice of Violation from CARB to Porsche
4. Jessica Grace Li Vehicle registration 2015
5. Jessica Grace Li Vehicle Look Up result
6. Alexander Birner certificate of title
7. Alexander Birner Vehicle Look Up result

EXHIBIT "1"

Key Figures

Moving
Globally
Key Figures

VOLKSWAGEN GROUP

Volume data¹

	2013	2014	%
Vehicle sales (units)	10,009,605	10,217,003	+2.0
Production (units)	10,017,191	10,212,562	+1.9
Employees at Dec. 31	610,076	592,586	+3.0

Financial data (IFRSs), € million

	2013	2014	%
Sales revenue	213,292	202,458	+5.4
Operating result before special items	12,824	12,697	+1.0
as a percentage of sales revenue	6.0	6.3	
Special items	16,893	—	x
Operating result	-4,069	12,697	x
as a percentage of sales revenue	-1.9	6.3	
Earnings before tax	1,301	14,794	x
Earnings after tax	-1,361	11,068	x
Earnings attributable to Volkswagen AG shareholders	-1,582	10,847	x
Cash flows from operating activities	13,679	10,784	+26.8
Cash flows from investing activities attributable to operating activities	15,523	16,452	+5.6

Automotive Division

Cash flow	7,212	23,100	+68.8
Cash flows from operating activities	23,796	21,593	+10.2
Cash flows from investing activities attributable to operating activities ⁴	14,909	15,476	+3.7
of which: capex	12,738	11,495	+10.8
as a percentage of sales revenue	6.9	6.5	
capitalized development costs	5,021	4,601	+9.1
as a percentage of sales revenue	2.7	2.6	
Net cash flow	8,887	6,117	+45.3
Net liquidity at Dec. 31	24,522	17,639	+39.0

Return ratios (%)

	2013	2014	
Return on sales before tax	-0.6	7.3	
Return on investment (ROI) in the Automotive Division	0.2	14.9	
Return on equity before tax (Financial Services Division) ⁵	12.2	12.5	

¹ Volume data including the unconsolidated Chinese joint ventures and including allocation of consolidation adjustments between the Automotive and Financial Services Divisions

² Operating result plus net depreciation/amortization and impairment losses/reversals of impairment losses on property, plant and equipment

capitalized development costs, lease assets, goodwill and financial assets as reported in the cash flow statement

⁴ Excluding acquisition and disposal of equity investments
€17,270 (€15,719) million

⁵ Earnings before tax as a percentage of average equity

VOLKSWAGEN AG

Volume data

	2013	2014	%
Vehicle sales (units)	2,676,629	2,615,686	+2.3
Production (units)	1,255,771	1,230,891	+2.0
Employees at Dec. 31	114,066	112,561	+1.3

Financial data (€GB), € million

	2013	2014	%
Sales	73,510	68,971	+6.6
Net loss/net income for the year	-5,515	2,476	x
of which:			
per ordinary share	0.11	4.80	
per preferred share	0.17	4.86	

This version of the annual report is a translation of the German original. The German takes precedence. All figures shown in the report are rounded, so minor discrepancies may arise from addition of these amounts. The figures from the previous fiscal year are shown in parentheses directly after the figures for the current reporting period.

Key Figures

VOLKSWAGEN GROUP

Volume data	2012	2013	%
	in million vehicles		
Vehicle sales (units)	10,217,003	9,728,250	+5.0
Production (units)	10,212,562	9,727,848	+5.0
Employees at Dec. 31	592,586	572,800	+3.5
Financial data (IFRSs), € million	2012	2013	%
	in million €		
Sales revenue	202,458	197,007	+2.8
Operating profit	12,697	11,671	+8.8
Profit before tax	14,794	12,428	+19.0
Profit after tax	11,068	9,145	+21.0
Profit attributable to Volkswagen AG shareholders	10,847	9,066	+19.6
Cash flows from operating activities	10,784	12,595	-14.4
Cash flows from investing activities attributable to operating activities	16,452	14,936	+10.2
Automotive Division			
EBITDA	23,100	20,594	+12.2
Cash flows from operating activities	21,593	20,612	+4.8
Cash flows from investing activities attributable to operating activities ¹	15,476	16,199	-4.5
of which: Capex	11,495	11,040	+4.1
as a percentage of sales revenue	6.5	6.3	
capitalized development costs	4,601	4,021	+14.4
as a percentage of sales revenue	2.6	2.3	
Net cash flow	6,117	4,413	+38.6
Net liquidity at Dec. 31	17,639	16,869	+4.6
Return ratios in %	2012	2013	
	in %		
Return on sales before tax	7.3	6.3	
Return on investment (ROI) in the Automotive Division	14.9	14.5	
Return on equity before tax (Financial Services Division)	12.5	14.3	

1. Volume data including the unconsolidated Chinese joint ventures
2. Including allocation of consolidation adjustments between the Automotive and Financial Services divisions

3. Operating profit plus net depreciation/amortization and impairment losses/reversals of impairment losses on property, plant and equipment

capitalized development costs, lease assets, goodwill and financial assets as reported in the cash flow statement

4. Excluding acquisition and disposal of equity investments
€15,719 million (€14,497 million)

5. Profit before tax as a percentage of average equity

VOLKSWAGEN AG

Volume data	2012	2013	%
	in million vehicles		
Vehicle sales (units)	2,615,686	2,495,745	+4.8
Production (units)	1,230,891	1,169,151	+5.3
Employees at Dec. 31	112,561	107,559	+4.7
Financial data (HGB), € million	2012	2013	%
	in million €		
Sales	68,971	65,587	+5.2
Net income for the year	2,476	3,078	-19.6
Dividends (€)			
per ordinary share	4.80	4.00	
per preferred share	4.86	4.06	

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Key Figures

VOLKSWAGEN GROUP

volume data		2012	%
	2011		
Vehicle sales (units)	9,728,250	9,344,559	+4.1
Production (units)	9,727,848	9,255,384	+5.1
Employees at Dec. 31	572,800	549,763	+4.2
financial data (IFRS) € million		2012	%
	2011		
Sales revenue	197,007	192,676	+2.2
Operating profit	11,671	11,498	+1.5
Profit before tax	12,428	25,487	-51.2
Profit after tax	9,145	21,881	-58.2
Profit attributable to Volkswagen AG shareholders	9,066	21,712	-58.2
Cash flows from operating activities	12,595	7,209	+74.7
Cash flows from investing activities attributable to operating activities	14,936	16,840	-11.3
Automotive Division ¹			
EBITDA ²	20,594	19,895	+3.5
Cash flows from operating activities	20,612	16,232	+27.0
Cash flows from investing activities attributable to operating activities ³	16,199	16,455	-1.6
of which investments in property, plant and equipment	11,040	10,271	+7.5
as a percentage of sales revenue	6.3	5.9	
capitalized development costs	4,021	2,615	+53.8
as a percentage of sales revenue	2.3	1.5	
Net cash flow	4,413	-223	x
Net liquidity at Dec. 31	16,869	10,573	+59.5
return ratios in %		2012	%
	2011		
Return on sales before tax	6.3	13.2	
Return on investment (RoI) in the Automotive Division	14.5	16.6	
Return on equity before tax (Financial Services Division) ⁴	14.3	13.1	

1 Volume data including the Unconsolidated Chinese joint ventures.

2 Prior-year figures adjusted to reflect application of IAS 19R.

3 Including allocation of consolidation adjustments between the Automotive and Financial Services divisions.

4 Operating profit plus net depreciation/amortization and impairment

losses/reversals of impairment losses on property, plant and equipment; capitalized development costs; leasing and rental assets; goodwill and financial assets as reported in the cash flow statement.

5 Excluding acquisition and disposal of equity investments.
(€14,497 million / (€12,528 million)).

6 Profit before tax as a percentage of average equity.

VOLKSWAGEN AG

Volume data		2012	%
	2011		
Vehicle sales (units)	2,495,745	2,580,266	-3.3
Production (units)	1,169,151	1,148,774	+1.8
Employees at Dec. 31	107,559	101,794	+5.7
financial data (HGB) € million		2012	%
	2011		
Sales	65,587	63,361	-4.1
Net income for the year	3,078	6,380	-51.8
Dividends (€)			
per ordinary share	4.00	3.50	
per preferred share	4.06	3.56	

This version of the annual report is a translation of the German original. The German takes precedence.

Key Figures

VOLKSWAGEN GROUP

Volume Data ¹	2012	2011	%
Vehicle sales (units)	9,344,559	8,361,294	+11.8
Production (units)	9,255,384	8,494,280	+9.0
Employees at Dec. 31	549,763	501,956	+9.5
Financial Data (IFRSs), € million	2012	2011	%
Sales revenue	192,676	159,337	+20.9
Operating profit	11,510	11,271	+2.1
Profit before tax	25,492	18,926	+34.7
Profit after tax	21,884	15,799	+38.5
Profit attributable to shareholders of Volkswagen AG	21,717	15,409	+40.9
Cash flows from operating activities	7,209	8,500	-15.2
Cash flows from investing activities attributable to operating activities	16,840	16,002	+5.2
Automotive Division ²			
EBITDA ³	19,906	17,815	+11.7
Cash flows from operating activities	16,232	17,109	-5.1
Cash flows from investing activities attributable to operating activities ⁴	16,455	15,998	+2.9
of which: investments in property, plant and equipment	10,271	7,929	+29.5
as a percentage of sales revenue	5.9	5.6	
capitalized development costs	2,615	1,666	+56.9
as a percentage of sales revenue	1.5	1.2	
Net cash flow	-223	1,112	x
Net liquidity at Dec. 31	10,573	16,951	-37.6
Return ratios in %	2012	2011	
Return on sales before tax	13.2	11.9	
Return on investment after tax (Automotive Division)	16.6	17.7	
Return on equity before tax (Financial Services Division) ⁵	13.1	14.0	

1. Volume data, including the unconsolidated Chinese joint ventures.

2. Including allocation of consolidation adjustments between the Automotive and Financial Services divisions.

3. Operating profit plus net depreciation/amortization and impairment losses/reversals of impairment losses on property, plant and equipment, capitalized development costs, leasing and rental assets, goodwill and financial assets as reported in the cash flow statement.

4. Excluding acquisition and disposal of equity investments: €12,528 million (€9,371 million).

5. Profit before tax as a percentage of average equity.

VOLKSWAGEN AG

Volume Data	2012	2011	%
Vehicle sales (units)	2,580,266	2,661,327	-3.0
Production (units)	1,148,774	1,215,058	-5.5
Employees at Dec. 31	101,794	97,651	+4.2
Financial Data (HGB), € million	2012	2011	%
Sales	68,361	67,178	+1.8
Net income for the year	6,380	3,418	+86.7
Dividends (€)			
per ordinary share	3.50	3.00	
per preferred share	3.56	3.06	

* This version of the annual report is a translation of the German original. The German takes precedence.

Key Figures

VOLKSWAGEN GROUP

Volume Data ¹	2010	2009	%
Vehicle sales (units)	7,278,440	6,309,743	+ 15.4
Production (units)	7,357,505	6,054,829	+ 21.5
Employees at Dec. 31	399,381	368,500	+ 8.4
Financial Data (IFRS), € million	2010	2009	%
Sales revenue	126,875	105,187	+ 20.6
Operating profit	7,141	1,855	x
Profit before tax	8,994	1,261	x
Profit after tax	7,226	911	x
Profit attributable to shareholders of Volkswagen AG	6,835	960	x
Cash flows from operating activities	11,455	12,741	- 10.1
Cash flows from investing activities	9,278	10,428	- 11.0
Automotive Division ²			
EBITDA ³	13,940	8,005	+ 74.1
Cash flows from operating activities	13,930	12,815	+ 8.7
Cash flows from investing activities ⁴	9,095	10,252	- 11.3
of which: investments in property, plant and equipment	5,656	5,783	- 2.2
as a percentage of sales revenue	5.0	6.2	
capitalized development costs	1,667	1,948	- 14.4
as a percentage of sales revenue	1.5	2.1	
Net cash flow	4,835	2,563	+ 88.6
Net liquidity at Dec. 31	18,639	10,636	+ 75.2
Return ratios in %	2010	2009	
Return on sales before tax	7.1	1.2	
Return on investment after tax (Automotive Division)	13.5	3.8	
Return on equity before tax (Financial Services Division) ⁵	12.9	7.9	

1: Volume data: including the unconsolidated Chinese joint ventures. Employees: in 2009 not including Chinese component plants

2: Including allocation of consolidation adjustments between the Automotive and Financial Services divisions

3: Operating profit plus net depreciation/amortization and impairment losses/reversals of impairment losses on property, plant and equipment, capitalized development costs, leasing and rental assets, goodwill and financial assets as reported in the cash flow statement

4: Excluding acquisition and disposal of equity investments: € 7,034 million (€ 7,585 million)

5: Profit before tax as a percentage of average equity

VOLKSWAGEN AG

Volume Data	2010	2009	%
Vehicle sales (units)	2,309,648	2,053,427	+ 12.5
Production (units)	1,100,186	1,038,344	+ 6.0
Employees at Dec. 31	94,787	95,164	- 0.4
Financial Data (HGB), € million	2010	2009	%
Sales	57,243	47,864	+ 19.6
Net income for the year	1,550	1,082	+ 43.3
Dividends (€)			
per ordinary share	2.20	1.60	
per preferred share	2.26	1.66	

This version of the Annual Report is a translation of the German original. The German takes precedence.

Consolidated Financial Statements of the Volkswagen Group

Income Statement of the Volkswagen Group for the Period January 1 to December 31, 2009

€ million	Note	2009	2008
Sales revenue	1	105,187	113,808
Cost of sales	2	-91,608	-96,612
Gross profit		13,579	17,196
Distribution expenses	3	-10,537	-10,552
Administrative expenses	4	-2,739	-2,742
Other operating income	5	7,904	8,770
Other operating expenses	6	-6,352	-6,339
Operating profit		1,855	6,333
Share of profits and losses of equity-accounted investments	7	701	910
Finance costs	8	2,268	-1,815
Other financial result	9	972	1,180
Financial result		-595	275
Profit before tax		1,261	6,608
Income tax income/expense	10	-349	-1,920
current		-1,145	-2,338
deferred		796	418
Profit after tax		911	4,688
Minority interests		-49	-65
Profit attributable to shareholders of Volkswagen AG		960	4,753
Basic earnings per ordinary share in €	11	2.38	11.92
Basic earnings per preferred share in €	11	2.44	11.98
Diluted earnings per ordinary share in €	11	2.38	11.88
Diluted earnings per preferred share in €	11	2.44	11.94

EXHIBIT “2”



Air Resources Board



Matthew Rodriguez
Secretary for
Environmental Protection

Mary D. Nichols, Chair
9480 Telstar Avenue, Suite 4
El Monte, California 91731 • www.arb.ca.gov

Edmund G. Brown Jr.
Governor

Note: This letter, but not the attachment containing confidential business information, is public.

July 13, 2016

Reference No. IUC-2016-013

Audi AG
Volkswagen AG
Volkswagen Group of America, Incorporated

Through:

David Detweiler
Executive Vice President and General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America, Inc.
3800 Hamlin Road
Auburn Hills, Michigan 48326

**SUBJECT: NOTICE OF REJECTION OF VOLKSWAGEN GROUP OF AMERICA
INCORPORATED'S DIESEL 3.0 LITER TDI ENGINE INFLUENCED
EMISSION RECALL PLAN SUBMITTED ON BEHALF OF VW AND AUDI**

Dear Mr. Detweiler and Mr. Johnson:

As you know, the California Air Resources Board (CARB) has been investigating the failure of Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC (collectively, VW) and Audi AG (Audi) vehicles to comply with State emission standards, test procedures, on-board diagnostic (OBD) system requirements, and other regulatory requirements. VW stated, and Audi acknowledged, that Audi designed, built, and supplied the 3.0 liter (3.0L) diesel engines for inclusion in VW's and Audi's 3.0L diesel vehicles. In November 2015, Audi admitted to CARB that its 3.0L diesel vehicles were equipped with undisclosed Auxiliary Emission

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.*

California Environmental Protection Agency

Control Devices (AECDs), which CARB later determined to be defeat devices that bypass, defeat, or render inoperative elements of the vehicles' emission control systems. These defeat devices were installed on VW's and Audi's 3.0L diesel vehicles manufactured for model years (MY) 2009-2016 (Generations 1, 2.1, and 2.2) in order to circumvent CARB's and the United States Environmental Protection Agency's (EPA) emission test procedures, so that VW and Audi could obtain Executive Orders from CARB and Certificates of Conformity from EPA. These documents were required before these vehicles could legally be introduced into commerce in California.

As a result of VW's and Audi's disclosures and CARB's investigation, in conjunction with EPA and Environment Canada, on November 25, 2015, CARB issued VW and Audi an in-use noncompliance letter covering these VW and Audi 3.0L diesel vehicles (Reference No. IUC-2015-012). CARB's in-use noncompliance letter, among other things, directed VW and Audi to return those vehicles to the claimed certified configuration. Pursuant to California Code of Regulations, title 13, section 2113(b), VW and Audi had until February 2, 2016, to submit a proposed influenced emission recall plan ("recall plan" or "proposed plan") to CARB that met the elements prescribed in California Code of Regulations, title 13, section 2114. VW's and Audi's recall plan was required to correct the nonconformities of their MY 2009-2016 (Generations 1, 2.1, and 2.2) 3.0L light-duty diesel vehicles in an expeditious manner.

VW, on behalf of itself and Audi, submitted a single, incomplete recall plan on February 2, 2016. After the February 2, 2016, deadline, VW and Audi submitted additional significant information and data, both in writing and orally, to CARB relating to the affected vehicles' nonconformities. CARB informed VW and Audi in a confidential letter dated February 17, 2016 (Reference No. IUC-2016-005), that the recall plan failed to address the basic requirements outlined in California Code of Regulations, title 13, sections 2113-2119. This letter also reiterated some of what was needed to fully meet the regulatory requirements. After the February 17, 2016 letter, and as late as June 2016, VW and Audi continued to submit additional significant information and data, both in writing and orally, to CARB relating to the affected vehicles' nonconformities.

VW's and Audi's submissions are incomplete, substantially deficient, and fall far short of meeting the legal requirements to return these vehicles to the claimed certified configuration. The VW/Audi proposed 3.0L influenced emission recall plan does not meet the requirements of California Code of Regulations, title 13, section 2113, subdivision (c), and fail to contain all of the required elements. Specifically, among other deficiencies, the proposed plan fails to do the following, as required under California Code of Regulations, title 13, section 2114, for all Generations 1, 2.1, and 2.2 vehicles:

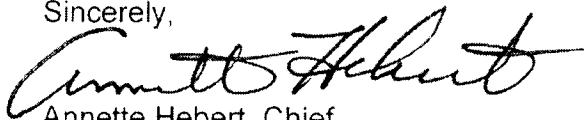
- Adequately describe the nonconformities and undisclosed AECDs/defeat devices on the affected vehicles;
- Sufficiently describe the remedial procedure for affected vehicles;
- Provide a meaningful estimated capture rate in California;
- Specify the system by which VW will ensure the availability of sufficient repair parts to institute the proposed fixes;
- Contain the impact of proposed fixes on fuel economy, drivability, performance and safety;
- Describe the impact of repairs on emissions, particularly average noncompliance emission levels, average emission reductions per pollutant, and an average emission level after proposed fixes;
- Demonstrate how the proposed fixes are designed to correct the nonconformities;
- Provide onboard diagnostic system demonstration data;
- Demonstrate how the plan is designed to correct the nonconformities in an expeditious manner; and
- Provide sufficient detail for CARB to evaluate the feasibility and success of the proposed plan.

CARB considers six of the deficiencies in Audi/VW's proposed influenced emission recall plan to be the most serious. First, VW and Audi have failed to disclose and provide a full description of all defeat devices and AECDs. Second, VW and Audi have failed to describe the nonconformities in sufficient detail for CARB to adequately understand them in the context of the recall plan, in order to determine whether the proposed fixes are feasible, would remedy each of the nonconformities, or would not cause adverse impacts on the emissions durability. Third, VW and Audi failed to specifically and completely describe the fixes in their proposed recall plan in a manner that allows CARB to adequately evaluate whether they could be successful or are even technically feasible or would not cause greater emissions deterioration. Fourth, VW's and Audi's proposed recall plan failed to provide required data to demonstrate that the affected vehicles will be returned to the claimed certified configuration including emissions durability during the useful life of the vehicles. Fifth, the proposed plan does not sufficiently address impacts the proposed fixes would have on the engine, the vehicle's overall operation such as drivability and fuel economy, and all related emission control technologies, including the OBD system, emissions durability, or the DEF system's dosing, warnings and inducements. Lastly, the recall plan cannot be completed expeditiously, as certain required data will not be available until early August 2016 for the Generation 2.2, mid-October 2016 for Generation 2.1, and the end of December 2016 for Generation 1. These six problems, as well as additional deficiencies with the recall plan, are described in more detail in the confidential attachment to this letter.

Mr. David Detweiler and Mr. Stuart Johnson
July 13, 2016
Page 4

Therefore, CARB is rejecting VW's and Audi's proposed 3.0L influenced emission recall plan for the 3.0L Generations 1, 2.1, and 2.2 diesel vehicles. CARB, in conjunction with EPA, will continue the on-going technical discussions with VW and Audi to evaluate their proposals through the enforcement action process to ensure a legally acceptable and expedited resolution to this matter. If you have any questions, I can be reached at (626) 450-6150.

Sincerely,



Annette Hebert, Chief
Emissions Compliance, Automotive Regulations, and Science Division

Confidential Attachment not to be released to public

cc: (via email only)

Mr. Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency
bunker.byron@epa.gov

Mr. Linc Wehrly, Director
Light-Duty Vehicle Center
U.S. Environmental Protection Agency
wehrly.linc@epa.gov

Dr. Todd Sax, Chief
Enforcement Division
California Air Resources Board
todd.sax@arb.ca.gov

NEWS RELEASE

Release #:16-37

Date:07/13/2016

ARB PIO: (916) 322-2990

CONTACT:

Dave Clegern
(916) 322-2990
dave.clegern@arb.ca.gov

Volkswagen Update:

Air Resources Board rejects Volkswagen recall plan for 3.0 liter diesel passenger cars

- The California Air Resources Board (CARB) today rejected proposed recall plans submitted by Volkswagen/Audi and Porsche for repair of undisclosed Auxiliary Emission Control Devices (AECDs) and defeat devices in 3.0 liter, diesel passenger cars manufactured for model years 2009-2016. This decision affects about 16,000 3.0 liter diesel Volkswagens, Audis and Porsches sold in California.

CARB staff has determined that the proposed recall plans submitted by the companies are incomplete and deficient in a number of areas (see links below for rejection letters).

CARB, in conjunction with EPA, will continue the on-going technical discussions with the companies through the enforcement process to ensure a legally and technically acceptable resolution is reached which fully mitigates the excess emissions.

See 3.0 liter rejection letters for [Volkswagen/Audi](#) and for [Porsche](#).

Other information concerning VW, Audi and Porsche's violations can be found [here](#).

ARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. The ARB oversees all air pollution control efforts in

California to attain and maintain health based air quality standards.

.....
Office of Communications 1001 I Street, Sacramento CA 95814. Ph: (916) 322-2990

[ARB Homepage](#) | [News Releases](#)

EXHIBIT “3”



Air Resources Board



Matthew Rodriquez
Secretary for
Environmental Protection

Mary D. Nichols, Chair
9480 Telstar Avenue, Suite 4
El Monte, California 91731 • www.arb.ca.gov

Edmund G. Brown Jr.
Governor

**Note: This letter, but not the attachment containing confidential
business information, is public.**

July 13, 2016

Reference No. IUC-2016-014

Porsche AG
Porsche Cars North America, Incorporated

Through:

Mr. Walter J. Lewis
Manager, Regulatory Affairs
Porsche Cars North America, Incorporated
980 Hammond Drive, Suite 1000
Atlanta, Georgia 30328

**SUBJECT: NOTICE OF REJECTION OF PORSCHE CARS NORTH AMERICA,
INCORPORATED'S DIESEL 3.0L V6 ENGINE INFLUENCED EMISSION
RECALL PLAN**

Dear Mr. Lewis:

As you know, the California Air Resources Board (CARB) has been investigating the failure of Porsche AG and Porsche Cars North America, Inc. (Porsche) vehicles to comply with State emission standards, test procedures, on-board diagnostic (OBD) system requirements, and other regulatory requirements. Audi AG (Audi) stated, and Porsche confirmed, that Audi designed, built, and supplied the 3.0 liter (3.0L) diesel engines for inclusion in Porsche's 3.0L diesel vehicles. In November 2015, Audi admitted to CARB that its 3.0L diesel engines, including those supplied to Porsche, were equipped with undisclosed Auxiliary Emission Control Devices (AECDs), which ARB later determined to be defeat devices that bypass, defeat, or render inoperative elements of the vehicles' emission control systems. These defeat devices were installed on Porsche's 3.0L diesel vehicles manufactured for model years (MY) 2013-2016 (Generations 2.1 and 2.2), in order to circumvent CARB's and the United States Environmental Protection Agency's (EPA) emission test procedures, so that Porsche could obtain Executive Orders from CARB and Certificates of Conformity from EPA. These documents were required before these vehicles could legally be introduced into

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.*

California Environmental Protection Agency

Printed on Recycled Paper

commerce in California. Porsche applied for Executive Orders from CARB, and in those applications, Porsche stated that the vehicles met the applicable emission standards. However, the vehicles were equipped with defeat devices and did not meet the applicable emission standards. In the applications for certification, Porsche also stated that the production vehicles would be in all material respects the same as the vehicles for which approval was granted. However, approval was granted for vehicles without defeat devices, while the production vehicles contained defeat devices.

As a result of Audi's disclosures and CARB's investigation, in conjunction with EPA and Environment Canada, on November 25, 2015, CARB issued Porsche an in-use noncompliance letter covering these Porsche 3.0L diesel vehicles (Reference No. IUC-2015-012). CARB's in-use noncompliance letter, among other things, directed Porsche to return those vehicles to the claimed certified configuration. Pursuant to California Code of Regulations, title 13, section 2113(b), Porsche had until February 2, 2016, to submit a proposed influenced emission recall plan ("recall plan" or "proposed plan") to CARB that met the elements prescribed in California Code of Regulations, title 13, section 2114. Porsche's recall plan was required to correct the nonconformities of its MY 2013-2016 (Generations 2.1 and 2.2) 3.0L light-duty diesel vehicles in an expeditious manner.

Porsche submitted an incomplete draft recall plan on February 2, 2016. After the February 2, 2016, deadline, VW and Audi submitted additional significant information and data, both in writing and orally, to CARB relating to the Porsche vehicles' (containing Audi engines) nonconformities. CARB informed Porsche in a confidential letter dated February 17, 2016 (Reference No. IUC-2016-006), that Porsche's recall plan failed to address the basic requirements outlined in California Code of Regulations, title 13, sections 2113-2119. This letter also reiterated some of what was needed to fully meet the regulatory requirements. After the February 17, 2016 letter, and as late as June 2016, VW and Audi continued to submit additional significant information and data, both in writing and orally, to CARB relating to the affected vehicles' nonconformities.

Porsche's submissions are incomplete, substantially deficient, and fall far short of meeting the legal requirements to return these vehicles to the claimed certified configuration. Porsche's proposed 3.0L influenced emission recall plan does not meet the requirements of California Code of Regulations, title 13, section 2113, subdivision (c), and fail to contain all of the required elements. Specifically, among other deficiencies, the proposed plan fails to do the following, as required under California Code of Regulations, title 13, section 2114, for all Generations 2.1 and 2.2 vehicles:

- Adequately describe the nonconformities and undisclosed AECDs/defeat devices on the affected vehicles;
- Sufficiently describe the remedial procedure for affected vehicles;
- Provide a meaningful estimated capture rate in California;
- Specify the system by which Porsche will ensure the availability of sufficient repair parts to institute the proposed fixes;
- Contain the impact of proposed fixes on fuel economy, drivability, performance and safety;
- Describe the impact of repairs on emissions, particularly average noncompliance emission levels, average emission reductions per pollutant, and an average emission level after proposed fixes;
- Demonstrate how the proposed fixes are designed to correct the nonconformities;
- Provide onboard diagnostic system demonstration data;
- Demonstrate how the plans are designed to correct the nonconformities in an expeditious manner; and
- Provide sufficient detail for CARB to evaluate the feasibility and success of the proposed plan.

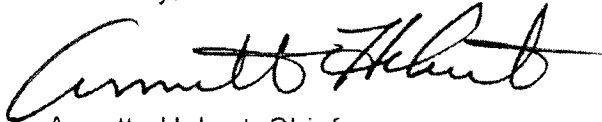
CARB considers six of the deficiencies in Porsche's proposed influenced emission recall plan to be the most serious. First, Porsche has failed to disclose and provide a full description of all defeat devices and AECDs. Second, Porsche has failed to describe the nonconformities in sufficient detail for CARB to adequately understand them in the context of the recall plan, in order to determine whether the proposed fixes are feasible or would remedy each of the nonconformities or would not cause adverse impacts on the emissions durability. Third, Porsche failed to specifically and completely describe the fixes in its proposed recall plan in a manner that allows CARB to adequately evaluate whether they could be successful or are even technically feasible or would not cause greater emissions deterioration. Fourth, Porsche's proposed recall plan failed to provide required data to demonstrate that the affected vehicles will be returned to the claimed certified configuration including emissions durability during the useful life of the vehicles. Fifth, the proposed plan does not sufficiently address impacts the proposed fixes would have on the engine, the vehicle's overall operation such as drivability and fuel economy, and all related emission control technologies, including the OBD system, emissions durability, or the DEF system's dosing, warnings, and inducements. Lastly, the recall plan cannot be completed expeditiously, as certain required data will not be capable of completion until early August 2016 for the Generation 2.2 and mid-October 2016 for Generation 2.1. These six problems, as well as additional deficiencies with the proposed plan, are described in more detail in the confidential attachment to this letter.

Mr. Walter J. Lewis
July 13, 2016
Page 4

Therefore, CARB is rejecting Porsche's proposed 3.0L influenced emission recall plan for the Generations 2.1 and 2.2 diesel vehicles.

CARB, in conjunction with EPA, as part of their ongoing joint technical discussions with Porsche, will continue to evaluate Porsche's proposals, and will continue to work with Porsche through the enforcement action process to ensure a legally acceptable and expedited resolution to this matter. If you have any questions, I can be reached at (626) 450-6150.

Sincerely,



Annette Hebert, Chief
Emissions Compliance, Automotive Regulations, and Science Division

Confidential Attachment not to be released to public

Cc: (via email only)

Mr. Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency
bunker.byron@epa.gov

Mr. Linc Wehrly, Director
Light-Duty Vehicle Center
U.S. Environmental Protection Agency
wehrly.linc@epa.gov

Dr. Todd Sax, Chief
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NEWS RELEASE

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Other information concerning VW, Audi and Porsche's violations can be found [here](#).

California to attain and maintain health based air quality standards.

Office of Communications 1001 I Street, Sacramento CA 95814. Ph: (916) 322-2990

[ARB Homepage](#) | [News Releases](#)

EXHIBIT “4”

AUTO 09/08/2015 TO 09/08/2016 11 6XRP567

VEHICLE IDENTIFICATION NUMBER

WVWDM7AJ7CW351611

BODY TYPE MODEL

4H

DATE ISSUED

07/04/2015

REGISTRATION VALID FROM

CVTS

DATE FIRST SOLD

00/00/2012

CLASS

FY

VOLK

YR

Yr Model

2012

\$198

1900

TYPE VEH

120

MP

D

AX

WC

UNLADEN/G/GW

TOTAL FEES PAID

LI JESSICA GRACE
OR LI RICHARD
1745 SHADEHILL PL
DIAMOND BAR CA 91765-2848

VW CREDIT INC
1401 FRANKLIN BLVD
LIBERTYVILLE

R0070
L0118

IL

60048
RJ7070120153003

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
VALIDATED REGISTRATION CARD
READ REVERSE SIDE - IMPORTANT INSTRUCTIONS

X

TO REMOVE THE STICKER
FROM THE BACKING,
BEND STICKER AT SLIT AND PEEL SLOWLY.

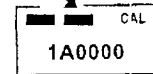
INSTRUCTIONS FOR

APPLYING STICKER TO LICENSE PLATE

1. CLEAN SURFACE THOROUGHLY. SCRAPE OFF ACCUMULATED STICKERS (STICKER WILL NOT STICK IF WET OR DIRTY).
2. PUT STICKER ON REAR LICENSE PLATE AS SHOWN BELOW:

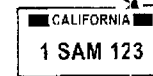
MOTORCYCLES:

Right Half of This Well



ALL OTHERS:

In Top Right Corner



EXCEPT:

Truck Tractors And Commercial Vehicles With
A Declared Gross Vehicle Weight of 10,001 lbs.
or More—Must Apply Sticker To Front Plate

4

EXHIBIT “5”

Official Informational Website

Volkswagen/Audi Diesel Emissions Settlement Program

Learn more about the Settlements and program to modify or buyback certain Volkswagen or Audi diesel automobiles in the United States

About

Vehicle Look-up

About

Volkswagen has reached proposed Settlements involving 2.0-liter **Volkswagen and Audi** diesel vehicles with the United States Environmental Protection Agency ("EPA"), the California Attorney General, the California Air Resources Board ("CARB"), the Federal Trade Commission, and current vehicle owners/lessees and certain former vehicle owners/lessees in the United States.

If the proposed Settlements are approved by the Judge, then Volkswagen has agreed to:

- Buy back, terminate leases or provide approved emissions modifications for nearly 475,000 2.0-liter TDI diesel cars in the United States;
- Provide cash payments to owners/lessees;
- Pay for environmental remediation; and
- Promote zero emissions vehicle technology.

OWNERS & LESSEES VOLKSWAGEN (<https://www.vwcourtsettlement.com/en/>)
GROUP OF AMERICA

(<https://www.vwcourtsettlement.com/en/>)



5

Buyback of your car (or
early lease termination) + Cash



Modification to your car to
improve emissions. Keep your car +
Cash (Modification must be approved by EPA
and CARB)

✔ Vehicle Look-Up

Enter a Vehicle Identification Number ("VIN") to determine if a vehicle is included in the proposed Settlements.

Where can I find a VIN Number?

WWWDM7AJ7CW351611

 Check Eligibility

This vehicle is included.

The VIN entered is included in the terms of the proposed settlements. Both Vehicle and Owner/Lessee eligibility stipulations apply in order to participate in the Settlements. Please return to this website or sign up below to receive updates as they are available.

2012 Golf Hatchback 4D TDI

First Name

LI Jessica

Last Name


Grace

VOLKSWAGEN (<https://www.vwcourtsettlement.com/en/>)
GROUP OF AMERICA

Email Address

(<https://www.vwcourtsettlement.com/en/>)

ZIP Code

 Submit Information

Court Documents

Class Action Settlement Agreement
Department of Justice Consent Decree
FTC Consent Order

Frequently Asked Questions

Which vehicles are included in the proposed Settlements?

The following 2.0-liter TDI engine vehicles are included and may be eligible:

VW Beetle

2013 - 2015

VW Golf

2010 - 2015

VW Jetta

2009 - 2015

VW Passat

2012 - 2015

Audi A3

2010 - 2013; 2015 **VOLKSWAGEN** (<https://www.vwcourtsettlement.com/en/>)
GROUP OF AMERICA

(<https://www.vwcourtsettlement.com/en/>)
What are the next steps?

Judge Charles Breyer will hold what is referred to as a preliminary approval hearing on the proposed Settlements on July 26, 2016. At this hearing, he will hear from the parties about the Settlements.

If the Judge grants preliminary approval, notice will be mailed to owners and lessees announcing the specific terms of the Settlements. At that time, owners/lessees will learn about their rights to exclude themselves, object, or comment on the Settlements as well as the options available to buyback or modify their car, or terminate their lease.

After the notice period is complete, Judge Breyer will hold another hearing, a final approval hearing, to decide whether the Judge will grant final approval to the Settlements. At the final approval hearing, the Judge will consider comments from owners/lessees on whether the Settlements are fair, reasonable, and adequate.

When will the emissions modification be available?

Volkswagen is working on an emissions modification for each of the cars listed above. EPA and CARB will need to approve any emissions modification before this option becomes available.

What am I eligible to receive under the proposed Settlements if they are approved?

If you own or lease an eligible vehicle, you have choices. You can opt for (1) Volkswagen Group of America ("VWGoA") buying back your car if you own it, (2) terminating your lease without an early-termination penalty if you are leasing the car, or (3) if an emissions modification is approved for your car by EPA and CARB, getting VWGoA to modify your car's emissions system at no charge. Each of these options includes a cash payment from VWGoA. In addition, pursuant to agreements with the EPA and the CARB, and as referenced in VWGoA's settlement agreement with consumers, VWGoA has committed to pay significant amounts to remediate excess nitrogen oxide emissions and to invest in chargers and other infrastructure for zero emission vehicles.

If I am a former owner or lessee, am I eligible to participate in the proposed Settlements?

If you owned an eligible vehicle on or before September 18, 2015 and sold it before June 28, 2016, you may be eligible to participate. Likewise, if you were leasing an eligible vehicle as of September 18, 2015, you may be eligible to participate.

VOLKSWAGEN (<https://www.vwcourtsettlement.com/en/>)
GROUP OF AMERICA



Timeline (<https://www.vwcourtsettlement.com/en/>)

JUNE
28

Settlement papers filed with Court

JUNE
30

Court status conference

JULY
26

Preliminary approval court hearing

FALL
16

Anticipated roll out of Settlement Program (pending Court approval)

VOLKSWAGEN (<https://www.vwcourtsettlement.com/en/>)
GROUP OF AMERICA

(<https://www.vwcourtsettlement.com/en/>)

EXHIBIT “6”

STATE OF CALIFORNIA

CERTIFICATE OF TITLE

VEHICLE HISTORY

58615090311

AUTOMOBILE

VEHICLE ID NUMBER
3VWLL7AJ1CM006554

YR
MODEL MAKE
2012 VOLK

PLATE NUMBER
7MEP734

BODY TYPE MODEL
4D

AX UNLADEN
WEIGHT

FUEL

TRANSFER DATE

FEES PAID
\$1297

REGISTRATION
EXPIRATION DATE
08/16/2016

YR 1ST
SOLD

CLASS

DE 2015

WGT

EQUIPMT/TRUST NUMBER

ISSUE DATE
09/03/15

MOTORCYCLE ENGINE NUMBER

ODOMETER DATE
08/15/2015

ODOMETER READING
39214 MI

ACTUAL MILEAGE

REGISTERED OWNER(S)
BIRNER ALEXANDER DONALD
1211 OAKCREST CIR
CORONA CA 92882

I certify (or declare) under penalty of perjury under the laws of the State of California that THE SIGNATURE(S) BELOW RELEASES INTEREST IN THE VEHICLE.

1a. DATE X SIGNATURE OF REGISTERED OWNER

1b. DATE X SIGNATURE OF REGISTERED OWNER

Federal and State law requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

The odometer now reads 39214 (no tenths), miles and to the best of my knowledge reflects the actual mileage unless one of the following statements is checked.

WARNING ☐ Odometer reading is not the actual mileage. ☐ Mileage exceeds the odometer mechanical limits.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE	TRANSFEROR SELLER SIGNATURE(S)	DATE	TRANSFeree-BUYER SIGNATURE(S)
	<u>X</u>		<u>X</u>
PRINTED NAME OF SELLER OR AGENT SELLING FOR A COMPANY		PRINTED NAME OF BUYER OR AGENT BUYING FOR A COMPANY	

IMPORTANT READ CAREFULLY

Any change of Lienholder (holder of security interest) must be reported to the Department of Motor Vehicles within 10 days.

LIENHOLDER(S):

2. X
Signature releases interest in vehicle (Company names must be countersigned)
Release Date

009241 GA 160582548

REG. 17.30RS (REV. 10/2012)

KEEP IN A SAFE PLACE - VOID IF ALTERED

AL 6
Cert of
Title

6

EXHIBIT “7”

Official Informational Website

Volkswagen/Audi Diesel Emissions Settlement Program

Learn more about the Settlements and program to modify or buyback certain Volkswagen or Audi diesel automobiles in the United States

About

Vehicle Look-up

About

Volkswagen has reached proposed Settlements involving 2.0-liter **Volkswagen and Audi** diesel vehicles with the United States Environmental Protection Agency ("EPA"), the California Attorney General, the California Air Resources Board ("CARB"), the Federal Trade Commission, and current vehicle owners/lessees and certain former vehicle owners/lessees in the United States.

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- Buy back, terminate leases or provide approved emissions modifications for nearly 475,000 2.0-liter TDI diesel cars in the United States;
- Provide cash payments to owners/lessees;
- Pay for environmental remediation; and
- Promote zero emissions vehicle technology.

OWNERS & LESSEES CAN CHOOSE:



7

Buyback of your car (or
VOLKSWAGEN lease termination) + Cash
GROUP OF AMERICA (https://www.vwcourtsettlement.com/e)

(https://www.vwcourtsettlement.com/en/)



Modification to your car to
improve emissions. Keep your car +
Cash (Modification must be approved by EPA
and CARB)

✓ Vehicle Look-Up

Enter a Vehicle Identification Number ("VIN") to determine if a vehicle is included in the proposed Settlements.

Where can I find a VIN Number?

3vwl17aj1cm006554

🔍 Check Eligibility

This vehicle is included.

The VIN entered is included in the terms of the proposed settlements. Both Vehicle and Owner/Lessee eligibility stipulations apply in order to participate in the Settlements. Please return to this website or sign up below to receive updates as they are available.

2012 Jetta Sedan 4D TDI

First Name

Last Name

Email Address

ZIP Code

VOLKSWAGEN (<https://www.vwcourtsettlement.com/e>)
GROUP OF AMERICA

(<https://www.vwcourtsettlement.com/en/>)

Court Documents

Class Action Settlement Agreement
Department of Justice Consent Decree
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(<https://www.vwcourtsettlement.com/en/>)

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Timeline



Settlement papers filed with Court

